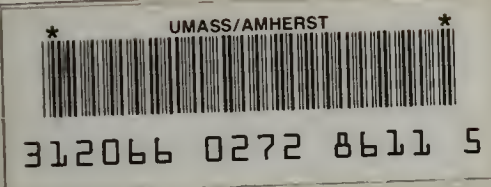


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MASSACHUSETTS CONSUMERS' COUNCIL

Annual Report
Fiscal Year 1976

Doris R. Pote'
Chairman

Bruce A. Singal
Executive Secretary

Publication # 9279-18-1000-10-76-CR
Approved by Alfred C. Holland, State Purchasing Agent

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DORIS R. POTE
CHAIRMAN

BRUCE A. SINGAL
EXECUTIVE SECRETARY

The Commonwealth of Massachusetts

Consumers' Council

Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

(617) 727-2605

Dear Consumer:

The Massachusetts Consumers' Council is proud to present this Annual Report of its activities for fiscal year 1976. In this, the first full year of the new Council's operation, a wide variety of ambitious projects have been undertaken. They are aimed primarily at attempting to help reduce the staggering cost of living in today's marketplace, to help improve the quality of consumer goods and services, and to provide consumers with the information they need to be informed and aware consumers.

These are not unique objectives, and they are concededly difficult to attain. The Consumers' Council pledges its continued commitment to them, and hopes and believes that its efforts will help to improve the quality of life for the consumers of this Commonwealth.

Very truly yours,

A handwritten signature in cursive script that reads "Doris R. Pote".

Doris R. Pote'
Chairman

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MASSACHUSETTS CONSUMERS' COUNCIL

Doris R. Pote', Chairman

Public Members:

Mrs. Kathryn F. Broman
Mrs. Annalee Bundy
Mr. Bertram C. Farnham
Dr. John T. Hasenjaeger
Mrs. Laura P. Jackson
The Rev. Robert J. McEwen, S. J.
Mrs. Helen Tafe O'Donnell

Ex Officio Members:

Francis X. Bellotti, Attorney General
Harold J. Keohane, Chairman, Department of Public Utilities
Carol S. Greenwald, Commissioner, Department of Banks & Banking
James M. Stone, Commissioner of Insurance
Nicholas Roussos, Commissioner, Department of Labor & Industries

Staff:

Bruce A. Singal, Executive Secretary
Terrance J. Hamilton, Counsel
Saul Barry Wax, Senior Planner
William F. Keenan, Field Investigator
George J. Lynch, Field Investigator
Eileen M. Pabst, Head Clerk
Mildred E. Leonard, Senior Clerk & Stenographer
Susan J. Bertucci, Junior Clerk & Stenographer

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I. The Massachusetts Consumers' Council: Introduction

The Massachusetts Consumers' Council is an independent agency which serves as a public advocate for consumer interests. Created by statute (Chapter 6, Section 115, of the Massachusetts General Laws) in 1963, the Council represents consumers before state and federal agencies, seeks the passage of consumer legislation, promotes consumer education, regulates unit pricing of food and other items, and otherwise protects and informs the consumers of the Commonwealth.

The Council is comprised of thirteen members who meet once a month to establish Council policies and authorize Council activities. Eight are public members appointed by the governor, and five are "ex officio" members from other state agencies: the Attorney General, Chairman of the Department of Public Utilities, and Commissioners of the Departments of Labor and Industries, and the Divisions of Banks and Insurance.

The Council has a small staff which initiates proposals to the Council members and implements the policies and activities set by the Council. For most of the time period covered by this report the staff has consisted of the Council's Executive Secretary, an attorney, a social scientist, two field investigators, an administrative assistant, and two secretaries. Near the end of the year another lawyer and a legal assistant were added. The budget for fiscal year 1976 was \$159,175.00.

This Annual Report is written to inform the public of the activities of the new Massachusetts Consumers' Council which was sworn in by Governor Dukakis in July of 1975. The Council's effectiveness is dependent on its being both responsive and responsible to the consuming public, and it is with these objectives in mind that we present this Annual Report. The report covers primarily the activities undertaken during fiscal year 1976, extending from July 1, 1975, to June 30, 1976, but also includes some activities undertaken in July and August of 1976 prior to the release of this report.

II. Representing Consumers Before Other Agencies

One of the most vital functions which the Council performs is to serve as an advocate protecting the interests of consumers before state and federal regulatory bodies. At a time when a wide variety of businesses and professions are licensed or regulated by various agencies, it is essential that consumers be represented by a forceful and independent voice before those agencies. It is this role that the Consumers' Council seeks to play, whether in urging the agency to adopt regulations to aid and protect consumers, to suspend or revoke licenses of businesses the Council has found to be violating the law, or to reduce rate increases sought by health care facilities, utilities, insurers, small loan companies, or others. During the past year, the Council has been involved in a number of such proceedings, as follows:

1. Auto Theft - The Council has filed a Petition for Rulemaking with the U. S. Department of Transportation (DOT) seeking a regulation which would require auto manufacturers to build more effective ignition lock systems in automobiles. The Petition, which has been joined by eleven other States and the Mass. Division of AAA, aims to curb skyrocketing auto theft and insurance rates. In support of the Petition the Council has submitted an engineering study which proposes a design for a new type of ignition lock. This device would ensure that the steering column remains locked even when the lock cylinder is forcibly removed (which is the most common method used to steal cars), and thus would be far more effective than locks which are permissible under the present, inadequate standard. Such a lock would add no more than \$3-\$4 to the cost of a car.

2. Prescription Drugs - The Council conducted, with The Real Paper, an investigation of the Greater Boston pharmacy community which entailed the purchase and evaluation of common prescription drugs at 73 randomly selected pharmacies. The investigation revealed widespread violations of legal and professional standards relating to the failure of pharmacists to package, label, and dispense the drugs in accordance with the law, and to give patients the advice, warnings, and instructions necessary to ensure that the patient will take the drug properly to produce the desired result, and to take precautions to avoid potential adverse side effects. The Council filed complaints against nine of the pharmacies with the Board of Registration in Pharmacy, seeking disciplinary action.

The Massachusetts State Pharmaceutical Association (MSPA), in response to the investigation, has sent letters

to its 2200 members statewide urging them to comply with all of the laws and professional standards on which the Council's investigation focused. The Massachusetts State Pharmaceutical Association should be commended for their close cooperation with the Council in seeking to maintain the standards of the pharmacy profession.

3. Repeal of Advertising Bans - The Council has launched a major effort to seek the repeal of all State statutes and administrative regulations which ban the advertising of professional goods and services. The effort was initiated by way of a court suit challenging the constitutionality of a Board of Optometry regulation which prohibits optometrists from advertising. That suit, Consumers' Council v. Board of Optometry, Suffolk Superior Court No. 10715, is presently awaiting trial. In a related matter, the Council submitted an amicus curiae brief in the Supreme Judicial Court case of Finkelstein v. Board of Registration in Optometry. There the Court agreed with the Council's contention that a Board of Optometry regulation restricting optometrists from advertising or practicing as dispensing opticians bore no rational relationship to the protection of the public health and welfare. In addition, the Council intervened and presented testimony in favor of a proposed Federal Trade Commission rule which would prohibit bans on advertising by optometrists.

Following the May, 1976, U. S. Supreme Court decision ruling unconstitutional state bans on prescription drug advertising, the Council filed Petitions with various boards of registration to repeal regulations those boards had adopted which prohibit advertising by architects, pharmacists, psychologists, accountants, dentists and dental hygienists, electrologists, embalmers and funeral directors. Similar bills will be filed to repeal statutory bans on advertising (see Section IV on legislative activities). Surveys conducted by the Council which have documented wide variations in the prices charged by optometrists, opticians, and pharmacists will be submitted in support of our position that consumers have a First Amendment right to know this information, so as to help them make better informed purchasing decisions.

4. Nursing Home Rates - The Council intervened in the State Rate Setting Commission's proceedings to determine rates for the Commonwealth's nursing homes' services to Medicare and Medicaid beneficiaries. The Council took the position that for the first time the rates to be paid to nursing homes should be tied to the quality of care they provide, and that if the Department of Public Health (the licensing and inspecting authority) finds that the care provided falls substantially below legally required

standards then the rates should be reduced commensurately. The Commission did not adopt this novel proposal, but the Council anticipates renewing it and continuing to represent consumer interests in the health field before this agency.

5. Liquified Natural Gas (LNG) Facility - The Council has voted to take legal action in support of a Fall River citizens group seeking to halt construction of an LNG facility in a densely populated section of that city. The action is based on the potential hazard of an LNG explosion such as has occurred elsewhere. The Council is preparing to seek to intervene in a Federal Power Commission rulemaking proceeding and to be admitted as a friend-of-the-court in a federal district court proceeding, both of which seek to halt construction of the facility.

6. Utilities Cases - The Council wishes to express its appreciation to Attorney General Bellotti, Paula Gold, Chief of the Consumer Protection Division, and the staff members of that division's utilities branch for representing the Consumers' Council in numerous rate and other utility cases before the Department of Public Utilities. They have done an outstanding job of representing consumer interests before that agency, and in reflecting the Council's posture that rate increases sought by electric, gas, and telephone companies must be scrutinized very closely to ensure that increases are granted only when warranted, and are kept at the lowest possible level. Besides rate cases, the Attorney General has also represented the Council in proceedings designed to establish billing and termination procedures for utilities, and in a Federal Power Commission proceeding opposing the curtailment of the natural gas supply to New England.

In a small number of cases the Council has represented itself before the Department of Public Utilities. One such case was the landmark Brockton Edison case in which the Department of Public Utilities, at the Council's urging, for the first time in ruling on a company's requested rate increase, ordered a reduction in rates -- in this case \$352,000. The Boston law firm of Connolly and Johnson represented the Council in this and several other rate cases.

The Council also appeared before the Department of Public Utilities to object to a proposal by New England Telephone to allow the taping of certain telephone conversations for security and other reasons. The Council expressed serious reservations regarding the potential of this proposal for infringing on personal privacy. The Department of Public Utilities rejected the proposal.

7. Insurance Rates - The Council appeared in hearings before the Insurance Department in opposition to proposed increases in automobile insurance rates. It also intervened in hearings to propose revisions in the Department's proposed regulations governing the procedures for hearings on auto insurance rates. The revisions sought to protect the right of the Council and other consumer groups to intervene and fully participate in those hearings on behalf of consumers.

8. Small Loans Interest Rates - The Council intervened in hearings before the Small Loans Regulatory Board to determine the maximum interest rates for loans of \$3,000 or less. Along with the Attorney General, the National Consumer Law Center, the Dorchester Community Action Council, and the East Boston People's Rights Group, the Council has opposed the increases sought by the small loan companies. A legal brief for all intervenors was filed in August and a decision is expected in the fall of 1976.

9. Proposed Automobile Regulations - The Council has presented detailed testimony to both the Attorney General and the Federal Trade Commission regarding rules those agencies have proposed regarding the sale and repair of new and used motor vehicles.

10. Rent Control - The Council appeared at a hearing of the Boston Rent Control Board to express its opposition to a proposal that landlords be automatically allowed to pass through to their tenants this year's property tax increase in the form of higher rents. The Council urged the Board to continue requiring landlords seeking rent increases for rent-controlled units to apply to the Board so that the Board could also consider any decreased expenses and increased rents from vacancy-decontrolled apartments, as well as outstanding sanitary code violations needing repair, before allowing rent increases.

11. Food Labeling Regulations - The Council has urged the Department of Public Health to expeditiously adopt a set of proposed regulations governing the labeling of food products. The regulations proposed by the Council would require mandatory nutritional labeling; open code dating for perishables, including meats and poultry; storage information and/or open code dating for non-perishables; complete ingredient labeling; and percentage characterizing ingredient labeling. The Council will appear before the Department at a hearing scheduled for November 8 to advocate these views.

12. Apartment Listing Companies - The Council voted to petition the Board of Registration of Real Estate Brokers to adopt regulations governing apartment-listing companies, firms which charge a fee for the right to inspect and copy a list of allegedly available apartments.

The regulations, being drafted at this time, would require that the companies ensure that the apartments they advertise and list are available for rental, and that a full and honestly represented service is provided in exchange for the fee.

III. Consumer Education

The Council is charged with the statutory mandate of promoting consumer education. This is a task of paramount importance to consumers of this Commonwealth. In Massachusetts we are privileged to have among the best consumer protection laws in the country. Sadly, however, few of our citizens know how to use these laws to protect themselves from the pitfalls of the marketplace. The Massachusetts Consumers' Council is committed to educating the public as to how common consumer problems can be avoided, and what legal rights and remedies they can exercise -- in many cases without an attorney -- to resolve these problems if and when they do arise. Primarily through the schools and the media, the Council is seeking to convey this important message, and to help people become aware, enlightened, and self-reliant consumers.

1. Teacher Training - In the spring of 1976 the Council inaugurated a statewide program designed to train teachers to teach consumer education classes, with emphasis on legal rights and remedies for various types of consumer protection problems. This program is premised on the twin beliefs that schools are the best forum in which to intensively educate large classes of consumers, and that the first necessary step in accomplishing this is to effectively train the people who will do the teaching.

With this objective in mind, the Council conducted an intensive ten week course for teachers in consumer protection. Taught by Bruce A. Singal, the Council's Executive Secretary, the course was attended by approximately 80 teachers from throughout the State. The Council wishes to extend its gratitude to Ruth Werman for an excellent job of coordinating the administrative aspects of the program; to Framingham, Boston, Worcester, and Bridgewater State Colleges for awarding two graduate credits to teachers who successfully completed the course; and to the following persons who gave stimulating and informative guest lectures:

George Annas, Director
Boston University Law and Health Sciences

James M. Stone, Commissioner of Insurance

Barbara Neuman and Richard Siebert
Staff Members, Banking Department

Assistant Attorneys General:
Susan Sloane Michael Meyer
Lisa Fitzgerald Charles Gamer
Kenneth Barna

Judge James W. Dolan, Dorchester District Court

Due to the enthusiasm with which this program was received, the Council is expanding its operation for the fall of 1976. The same ten week course will again be offered for teachers in Boston, beginning on September 28. For the same ten week period it will also be taught in Worcester (by Hugh O'Malley, Esquire), Springfield (by Michael West, Esquire), and New Bedford (by Robert Cohan, Esquire). Approximately 200 people are registered to take the courses.

2. Teaching and Learning Aids - Essential to the success of any educational program is the creation, distribution and effective use of educational materials. Five thousand copies of the Council's widely-acclaimed You Can Get Results, a comprehensive description of Massachusetts consumer protection law and ways in which lay persons can use it, have been distributed, many for use in classes. A second printing of 5,000, including a 1976 addendum incorporating important changes in the law, has been undertaken.

Thousands of the booklet "How to Sue in Massachusetts Small Claims Court," written by Mass. PIRG and distributed by the Council, have been sent to each of the Small Claims Courts throughout the State, with the request that they be made available to all persons filing claims. The booklets have also been widely disseminated to teachers for classroom use. The Council has also produced a 16 millimeter film entitled "Gotcha," comprising a series of vignettes portraying typical consumer problems and legal means of resolving those problems. The seven copies of the film are loaned out to teachers and others on a regular basis.

3. Public Service Announcements - Besides schools, the media offer the best opportunity for reaching large masses of people with educational messages. Toward this end, the Council has developed a series of short public service announcements, each focusing on a common consumer problem or issue. Attempts are being made to have television and radio stations air the spots on a regular basis.

4. Other Publications - The Council began issuing its newsletter, The Commonwealth Letter, in July, and anticipates issuing it every three months. It contains highlights of the Council's major activities, educational tips for consumers, and other consumer news.

In connection with its report on pharmacy practices (see Section III) the Council published a brochure entitled "A Shopper's Guide to Prescription Drug Buying," which provides helpful advice to purchasers of prescription drugs on how to save money and get quality service.

The Council has also issued the second edition of its "Nutrition Education Services for the Commonwealth," a listing of statewide centers which provide nutrition education.

5. Unbuy of the Week Award - In an effort to educate consumers to develop healthy food-shopping and dietary habits, the Council voted to grant an "Unbuy of the Week" award on a regular basis, beginning in the fall of 1976. The "Award" will be presented to various food products which a panel of medical, health, and food experts judge to be poor nutritional and economic values in comparison with available alternatives.

6. Consumer Contracts - As part of its educational policy of giving consumers the tools to help themselves in the marketplace, the Council has begun distributing a series of model consumer contracts for various types of consumer transactions. These contracts are designed to ensure that consumers enter into agreements which contain fair, equitable, and legal terms. In many transactions, consumers are presented with one-sided agreements which are written by and for the business, and which are offered to consumers on a take-it-or-leave-it basis. The first contract applies to home improvement transactions. It has been distributed widely throughout the State, and the great demand for it has necessitated a second printing. The second contract, being prepared at the time of this report, will deal with repairs of consumer products. The Council will continue to write and distribute model consumer contracts to aid consumers in common types of transactions.

IV. Consumer Legislation

In November and December of 1975 the Council filed its legislative package for the 1976 legislative session. The package included bills to:

1. Increase the dollar limit for Small Claims Court actions from \$400 to \$750, and require Saturday and evening sessions to allow for greater accessibility and convenience for consumers.
2. Allow consumers to terminate contracts with health clubs and receive pro rata refunds.
3. Require landlords to safely maintain tenants' security deposits in separate, interest-bearing escrow accounts.
4. Allow consumers to file suits under the Consumer Protection Act (Chapter 93A) in Small Claims and District Courts to avoid the expense, complexity, and delay of Superior Court, where all such actions must presently be filed.
5. Require public schools to teach consumer education courses.
6. Require auto dealers to disclose to consumers their legal right, upon meeting certain conditions, to cancel agreements for the purchase of automobiles which fail to pass the State auto inspection sticker test.
7. Require persons in the business of repairing automobiles and consumer appliances and products to provide consumers with written estimates of the cost of the work, and not to exceed the estimates without the consumer's approval.
8. Repeal the Fair Trade Law, which prohibits the sale of certain products at prices lower than those set by the manufacturer of the product.
9. Prohibit notices to quit sent by landlords to tenants from simulating official, judicial, or governmental orders, and requiring them to disclose to the tenant his or her right to a court hearing before being evicted.
10. Four bills dealing with the Milk Control Commission and Nutrition Board.

Although at the time of this report none of the

bills had become law, some had received favorable committee reports and were awaiting further action.

The Council also scrutinizes all bills which affect consumers, and seeks the passage of bills favorable to consumers and the defeat of those which are adverse to consumers. Among the important consumer bills which the Council actively supported was H. 4585, AN ACT AUTHORIZING OPTOMETRISTS TO ADVERTISE, filed by Rep. Thomas Lopes of New Bedford. With the support of Rep. Richard Demers (Chicopee) and Sen. Alan MacKinnon (Weymouth), Co-Chairmen of the legislature's Joint Commerce and Labor Committee, the bill was passed. At the Council's urging, the Governor declared the bill to be an emergency measure, effective immediately.

Other important Massachusetts bills which the Council supported included bills to:

1. establish a patients' bill of rights;
2. strengthen the drug formulary law;
3. extend the State's local option rent control law;
4. require insurance policies to be written in simple and easily understandable language;
5. further regulate towing companies;
6. tightly regulate the sale of condominiums; and
7. increase the State Rate Setting Commission's authority to review hospital budgets and control hospital costs.

The Council also voiced strong support for a bill presently pending before Congress which would establish an independent federal Consumer Protection Agency empowered to intervene before federal agencies to represent consumers' interests. President Ford, who has stated he would veto such a bill, proposed instead consumer representation plans which would provide for non-voting, advisory consumer representatives within each federal agency. The Council sharply criticized these plans and urged the President to sign the consumer agency bill instead.

Another part of the Council's legislative function is to voice opposition to bills which are recognized as being adverse to consumer interests. The Governor's

Legislative Office regularly requests positions from the Council on all enacted legislation affecting consumers. In two instances, the Council voiced strong opposition to bills which would have weakened laws governing small loans. Both bills (H. 1470 and 1471) were returned with a message to the General Court, citing the opposition of the Council, as well as the Attorney General, to their enactment.

Having devoted the largest portion of its limited resources during the past fiscal year to advocacy before other agencies and to educating consumers with respect to laws already on the books, the Council is preparing for a more extensive legislative effort in the upcoming year. A staff member has been hired who will devote full time to legislative work. He and other members of the staff are presently in the process of drafting a package of legislation for the 1977 session. At the time of this report, the bills which have been drafted and are being considered by the Council for filing include:

1. A bill to increase consumer representation of membership on the boards of registration; consolidate any duplicative boards; and strengthen powers and revise functions where appropriate.

2. A bill to revamp the procedures employed in Small Claims Courts so as to increase the jurisdictional dollar limit for which claims can be filed; provide for additional sessions on Saturdays and evenings so as to increase accessibility and convenience to consumers; and to simplify the means of collecting judgments.

3. A bill to provide an assessment to be imposed on health care facilities and to be paid to the Council for the purpose of hiring lawyers, accountants, and expert witnesses to allow the Council to intervene representing the interests of health care consumers before the Insurance Department, Rate Setting Commission, and the Department of Public Health in rate cases, Certificate of Need hearings, and other health related matters.

4. A bill to allow the establishment of prepaid legal service plans in order to make legal services more readily available to low and middle income persons, and to encourage preventive legal assistance.

5. A bill to repeal provisions banning advertising by barbers, podiatrists, chiropractors, dentists and dental hygienists, electrologists, embalmers and funeral directors, as previously approved by the Council.

6. A bill addressing the problems uncovered in our prescription drug study relating to failure of pharmacists to provide warnings, instructions and advice which are important to the health and well-being of patients; the weaknesses of the present Formulary Law; and the failure to maintain patient profiles, consistent with maintaining the confidentiality of the information and the privacy of the patient.

7. A bill to require greater consumer and public participation in the setting of group Blue Shield insurance rates by the Insurance Department.

8. A bill to establish housing courts in certain counties in the Commonwealth which do not presently have one.

9. A bill to establish a warranty of habitability on the sale of new homes and condominiums, and remedies for consumers when that warranty is breached.

10. A bill to strengthen the Consumer Protection Act (Chapter 93A) by allowing such actions to be brought in Small Claims and District Courts, allowing the imposition of civil fines for violations, and other necessary revisions.

11. A bill to require utility companies to extend from six to ten months the time within which the Department of Public Utilities must decide a rate case before the rates proposed by utilities automatically take effect.

V. Miscellaneous

1. Unit Pricing - The Council is mandated by Chapter 6, Section 115A of the Massachusetts General Laws to regulate unit pricing of food items and other packaged commodities sold at retail. The Council is in the process of reviewing the regulations which have been adopted to determine whether any revisions should be made to increase consumer utilization and convenience. The Council has also sent out warning letters to 97 supermarkets which had not, as required by Council regulation, submitted their unit pricing label to the Council for the Council's approval. Most of the stores receiving those letters have since submitted their labels. Enforcement of the Council's unit pricing regulations is primarily in the hands of the State Division of Standards and the local sealers of weights and measures, and the Council commends them for their fine job of monitoring compliance with the regulations, and of prosecuting violators.

2. Study of Consumer Complaints - One of the major consumer issues confronting the Commonwealth is to determine the best means of handling the thousands of complaints filed by consumers each year with various agencies. Questions of whether such complaints should be resolved at the State or local level, formally or informally, by existing mechanisms or new ones, have plagued consumer advocates for many years, and have not been satisfactorily resolved. Robert Gage, a student in the joint program of the Kennedy School of Government and Harvard Law School, prepared for the Council a comprehensive report on this pressing matter entitled "Analysis and Proposed Reform of Consumer Complaint-Handling in the Commonwealth of Massachusetts." The report is a fertile source of thoughtful and well-researched criticisms of the present system, and proposed reforms. The ideas contained in the report are being considered by the Council with respect to proposed legislation (see Section IV), and by other consumer groups.

3. Grant Proposals - The Council has submitted a grant proposal to the National Science Foundation for a joint study with Massachusetts Institute of Technology on the impact on consumers of the licensing of various professions and occupations. No decision has been made as yet on the proposal. The Council is also in the process of drafting a grant proposal to the New England Regional Commission for funds to represent and educate consumers in energy-related matters. A grant proposal to the Department of Health, Education and Welfare for funds to further expand the Council's consumer education program was not accepted.

